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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No._____

In The
Supreme Court of the United States

M.R.Mikkilineni,
Petitioner,
v.

City of Houston, Texas; Dennis Lloyd; Russell Mai; Philip Bernard; Roger Boulet
United States of America; Secretary of Labor; Juan Padron; Harold Dark; John Lawson
State of Texas
Respondents.

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Fifth Circuit

Petition for Writ of Certiorari

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Questions Presented

Question I:

Whether Fifth Cir. has decided an important federal question- in approval of an unlawful or *void* sanction-contempt rule made by a lower court, to abridge or modify *pro se* citizen's 1st Amend. right of access into the courts on his existing claim, with a threat of "*new criminal contempt charges and criminal penalties, including incarceration*" in conflict with the decisions of 6th & 3rd Cir. under FRAP 4(a)(4)- that should be settled by this Court.

Question II:

Whether Fifth Cir. has decided an important federal question- in approval of a lower court's usurpation of jurisdiction, to deprive *pro se* citizen's life, liberty or property without due process under 5th (7th , 14th) Amend. on his existing or lost claim, construing it as "*denial-of-access-to-the-courts claim*" in conflict with the decisions of this Court in allowing an independent action under FRCP 60(b)- that should be settled by this Court.

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Opinion Below

On June 30, 2010, 5th Cir. denied my petition for rehearing (App.6); on June 1, 2010, 5th Cir. dismissed my appeal as frivolous (App.1: unpublished) and approved lower court's usurpation of jurisdiction to rule or abridge 1st Amend. right of access to the court, and deny a 'rule 60(b) motion' for leave to sue on my existing or lost claim construing it as "denial-of-access-to-the courts claim". See App.4,7- lower court's wrongful acts in the matter or over me after March 1, 1999.

Basis for Supreme Court Jurisdiction

5th Cir. entered an unpublished order on June 1, 2010. I timely sought rehearing, and 5th Cir. denied rehearing on June 30, 2010. I now seek review of that order on a writ of certiorari, and this Court has jurisdiction to review the final-orders of 5th Cir.

Constitutional and Statutory Provisions Involved

US Constitution *Amendment* I, IV, V, VII, & XIV, and 28 USC @1346(b)(1). See App. 10

Statement of the Case

A. Summary of Facts

A contract with City of Houston (City) that requires a *cause* to terminate gave me a *property* right. City refused to correct premise defects in its land and plans when reported; then, authorized its agents to retaliate using or misusing its tangible property, and increased cost of doing my work. City agents made *false*-reports on safety at my work site to the US Dept. of labor (Dol). Using City's reports, Dol agents entered into my office to search and seize things- without my permission. Dol-City agents conspired to give citations and fines of $152,000 (although at one time wanted to fine up to

$800,000). City used or misused those fines to get my Surety bond credit cancelled- and drove me out of business.

Upon timely completion of the work, with no safety-problems, City took-over the project for its beneficial use; then, manufactured a *false* evaluation-report on my work. City refused to make final payment owed to me ($350,000) under the terms of the contract. Thus, City breached the contract in 1993-4.

Later, Dol-City agents testified *falsely* at a hearing on the citations-fines with meeting of mind.

Because of such wrongful-acts, in 1994, I commenced a suit (at No.94-3552) in USDC/SD Tx., against:

. *City for 'breach of contract'; City and its agents under* @1983, 1985 & 1981; *Dol and its agents under US Const. Amend.* IV (entering into my office to search, seize things).

In mid April 1996, judge dismissed my federal-law claims using select *false*-testimony*1-2 from City-Dol agents' depositions-affidavits, and/or *twisting* evidence to suit the purpose, without allowing court-ordered discovery to complete; and, asked me to take my *'breach of contract'* claim against City into a state-court*3

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*1 Evidence supporting my claim under 4th Amend.-

Dol agent Dark testified-"*we posted* (notice of imminent danger) *in the control building that Mikkilineni was using as an office at the time*"

Dol agent Lawson testified- "*No, I did not*" ask Mikkilineni's permission to inspect.

(continued on following page)

City agent Boulet testified- *"after the trailer was removed, Mikkilineni moved his tools and stuff into the valve box and then when the control room got built, he moved his tools and office into that. No, it was not* (my office), *I believe Mikkilineni's* (office)"

Judge concluded-

> *"while plaintiff makes a vague reference in his deposition to.. Dark and Lawson going into his 'other office' without telling him, no claim is made or evidence presented that plaintiff exercised exclusive dominion and control over an 'other office'..."*

Judge dismissed my claim under 4th Amend. using Boulet's testimony as-

> *"uncontroverted ... that the trailer housed both plaintiff's and Boulet's offices, that the doors and telephones to the offices were used interchangeably, that plaintiff's office remained open throughout the day, and that plaintiff's office was used as an office for other contractors on the work site"*

Boulet's testimony that *"plaintiff's office was used as an office for other contractors on the work site"* is *'controverted'* by his supervisor, Oradat, who testified- *"we awarded the contract to them"* (Talasila: firm owned by me). So, City did not award the contract to *'other contractors'* and there is no other contractor on the work site (makes Boulet's testimony *false*)

Evidence supporting my claim under @1981 & 1983-

Lawson testified- *"From my experience, this is the first referral that I have received from the City"*

Boulet testified- *"Oh, yes. I 'd say, Yes"* Mikkilineni generally fixed the things brought to his attention

City's chief engineer Scott testified-

> *"I assume he* (Mikkilineni) *complied with this* (safety requirements) *if we did not suspend him, or at least made a good effort to comply with it"*

(continued on following page)

Judge omitted/*twisted* evidence, and dismissed my claim under @1981:

> "*Plaintiff makes much of the fact that Lawson could not recall City having previously called OSHA with a concern about work site safety... uncontroverted testimony of Lloyd is that OSHA was not asked to inspect other City work sites with similar safety problems because those contractors immediately corrected the identified problems.*"

Judge dismissed my claim under @1983:

> "*it appears.. plaintiff claims that his liberty interest.. was damaged by false statements on City's performance evaluation .. Lloyd states in his deposition and affidavit, however, that.. performance evaluation was never published to anyone other than Talasila... Moreover, plaintiff otherwise points to no summary judgment evidence raising a fact issue..* (that) *Lloyd knowingly gave any company false information designed to interfere with plaintiff's right to operate a legitimate business. on this issue, in fact, is Lloyd's affidavit that he never made false statements to a bonding Co.*"

*2 Significant *new* evidence discovered on September 03, 1997: Willard, a third party, testified-

> City agents Lloyd (and others) reported to him on "*August 07, 1995*" that Talasila's work is the "*worst job* (with) *safety-violations; didn't pay subs, poor schedule; went to bonding Co., tried to terminate but couldn't* (and) *lift-station is already starting to settle....*"

*3 In May 1996, I timely filed a state-suit against City for '*breach of contract*', *tort* and @1983 for depriving due process under 14th Amend. In 1997, state-judge dismissed my federal-law claims using '*res judicata/ collateral estoppel* etc.., with evidence on City's *fraud* upon the court in hand. Then, in 1998, he declared "*no jurisdiction* in the matter or over *me*'; after few months he signed an order prepared by City dismissing '*breach of contract*', *tort* claim and the suit without taking any evidence.

In 1996, City-Dol agents knowingly testified *falsely* in the court to *impede, obstruct* the proceedings. Thus, *deprived* my right to present evidence to the court- on City's use or misuse of Dol's *false* fines and its' own evaluation report to third parties that caused me lose at least one contract of more than $1,000, 000.

In 1997, 5th Cir. denied my motion to file brief 9-days late and dismissed my appeal (No.96-20471).

In November 1997, I filed a rule 60(b) motion for relief from the final-order in my *first*-suit based on significant *new* evidence discovered (from Willard in Sept. 1997). In April 1998, judge denied my motion in *code* words- I did not give "*a reason to justify relief.*" Upon my timely appeal (at No.98-20430), 5th Cir. dismissed the appeal as *frivolous*, and on July 12, 1999 (Barksdale, Garza) imposed sanction-

> "until Mikkilineni pays $105..(he) shall not file any civil appeal or other civil filings in this court unless he obtains written permission to do so from a judge..."

B. Course of Proceedings Below

On April 1, 1998, I timely filed an independent action (at No.98-944) in USDC/SD, against-

. *City and its agents under* @1985 & 1983 (14th *Amend.*)

I cited the evidence on City-Dol agents' *fraud* in my *first*-suit. City did not file an answer, but filed a motion to dismiss under *res judicata* or *statute of limitations*. So, in June 1998, I filed an *amended*-complaint *once* as a matter of right under FRCP 15(a). I attached evidence of *fraud* upon the court plus significant *new* evidence discovered*2 on City agent Lloyd's *perjury*. I, also, joined Dol agents as defendants under FRCP

19(a)(1)(A), a required joinder of a party to civil conspiracy under @1985. I made claims against:

. *City defendants under* @1983, 1985; *City for breach of contract, common law breach & tort;* and *Dol agents under* @1985, 4th & 5th *Amend.*

City and its agents filed an answer; Dol agents did not-despite timely service of complaint-summons. In August 1998, Gilmore, on her own motion, "*struck*" my *amended*-complaint from the record and said "*leave to file has not been sought or granted*"; then, on February 16, 1999, entered a *final*-judgment dismissing*4 my suit.

On March 01, 1999, I filed a rule 60(b)(1) motion requesting to allow *pro se* clarify on the facts, and filed a Notice of appeal. On May 4, 1999, Gilmore *denied* my motion (App.9). On May 24, 1999, I filed another Notice of appeal on the denial. Thus, my Notice of appeal filed on March 01, 1999 became effective to the *final*-judgment entered on February 16, 1999, and the other Notice became effective to the denial of motion. See FRAP 4(a)(4)(B)(i), (ii) & (iii). That affected transfer

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*4 Gilmore dismissed the *second* suit and claimed:

(i) The alleged "*facts are insufficient*"@1985(3) or became an "*intracorporate conspiracy*" (in the absence of Dol agents in the suit) after my *amended* complaint is *stricken.*

(ii) The "*alleged false reports* (made to Surety, and Willard) are *insufficient* @1983 (and I) *must demonstrate City acted pursuant to a policy or practice, custom*" (although there is no law that requires demonstration of City's policy in doing *fraud* upon a court using *false*-testimony for its benefit).

(iii) In the absence of "*precision* and *specificity*" in the complaint, the "*court finds Plaintiffs fail*" to state a claim @1983.

of jurisdiction in the matter into 5th Cir. (at No.99-20506) as of March 01, 1999. See FRAP 4(a)(4)(B)(i).

On May 28, 1999, 3 ½ months after entry of the *final*-judgment, City filed a pleading- not a rule 11 motion for attorney fees- but for a sanction to prohibit me from *re*-filing my existing claim. There is no law under which City could prohibit my 1st Amend. right of access into a court because I filed an appeal.

City's motion is untimely, even if it is under FRCP 52(b) or 59(a) (*the rule provides prior to December 1, 2009 that such a motion be filed within 10 days of entry of final-judgment*).

Using City's untimely motion as a cover- on June 21, 1999, Gilmore finds that I "*filed groundless federal and state law claims which were made in bad faith*", and entered a sanction to prohibit me from *re*-filing my existing claim without permission from a judge (App.7). The new finding amended her final order that said- I alleged "*insufficient*" facts or failed to allege City's policy (in doing *fraud* upon the court). To this day no court has ever heard evidence on my "*state law claims.*" The sanction order to prohibit my 1st Amend. right is *void**5. See FRAP 4(a)(4)(A)(ii) & (iv).

On June 29, 1999, I filed a Notice of appeal on the sanction, and 5th Cir. docketed it as part of my appeal at No.99-20506; then, on July 19, 1999, it decided to move that into a *new* appeal at No.99-20669. On August 18, 1999, clerk *dismissed* my appeal without prior notice, and claimed '*I failed to pay docketing fee*'. No additional

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*5 Keohane, 320 F.2d 429 (6th Cir.); Venen, 758 F.2d 117 (3rd Cir.); Alberti, 46 F.3d 1347 (5th Cir.); & Bagwell 114 S.Ct. 2552

fee is required under FRAP 4(a)(4)(B)(i), (ii) & (iii) for an amended Notice. At that stage my motion for waiver of filing fee (07/21/99) was pending at the 5th Cir., along with my check of $105 (02/23/99) for filing fee which the clerk held until August 10, 1999, before retuning it to me in getting ready to dismiss my appeals.

I sent a *new*-check for $105 to the clerk. Upon receipt of that check, 5th Cir. judges, on 11/30/1999, dismissed my appeal at No.99-20506, in an unpublished order-

> "Mikkilineni has not paid the $105 sanction, and has not requested leave to file the instant *IFP* motion. Accordingly, Mikkilineni's appeal is dismissed".

That is an out-right *lie*- like many times before- but in this instant I have an e-mail confirmation from 5th Cir. clerk that my *new* check is received on 11/29/1999.

In February 2001, I *re*- filed my existing claim in a *third*-suit (No.01cv314) in USDC/DC, as a resident of Washington DC. I had to do that because USDC/SD Tx. has no jurisdiction in the matter after March 1, 1999, the sanction is unlawful and *void*, and under Supreme Court law*6, I am allowed to disregard the *void* sanction.

In March 2001, City filed a motion for *civil*-contempt against me (at No.98-944). Judge Sullivan's *sua sponte* order of 5/11/2001 (at No.01-314) transferred the case file to Gilmore before DC Cir. could complete its review on my pending petition; thus, depriving my right to due process under 5th Amend. Sullivan entered that transfer order after a *talk* with Gilmore, without a hearing on the issues I raised- *lack* of jurisdiction and deprivation of

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*6 Shipp, 27 S.Ct. 165

constitutional rights at USDC/SD Tx. Later, on June 22, 2001, Gilmore declared*7 in a telephone-hearing held with me that she had a *talk* with Sullivan to get the case transferred to her.

Gilmore denied my motion to *re*-transfer that suit back to USDC/DC. 5th Cir. did not act on my motion to *re*-transfer either, although it can under the 'unusual circumstances' of my case (see Koehring Co. v. Hyde Const. Co., 382 US 362). I did not seek jurisdiction in Texas courts after March 1, 1999, because of deprivation of my constitutional rights.

Nearly 2-months after closing my transferred suit, on August 10, 2001, Gilmore entered a contempt order against me misusing prior *void* sanction. In April 2002, 5th Cir. (Jolly, Garza, Stewart) at appeal No.01-21086, with an unpublished order said-

> "after reviewing the record, we find no issue of arguable merit.. we deny *IFP* and dismiss the appeal as frivolous"

5th Cir judges prefer an '*arguable* merit' over truth or the facts and law, because the former may make Gilmore-Sullivan *talk* fruitful in usurping jurisdiction. 5th Cir. clerk's wrongful dismissal of my appeal on *void* sanction and the "*talk*", made Texas courts as an "impermissible venue" for my claims. So, in May 2002, I *re*-filed my existing claim in USDC/DC (at No.02-970), against:

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*7 On June 12, 2001, Gilmore grabbed the transferred case assigned to judge Rosenthal; on June 22, 2001, held a contempt hearing on phone, closed the case, and ordered contempt- all in few minutes.

. *City under* 14th *Amend.*, @1983 & *tort- common law breach, fraud & intentional infliction of emotional distress; US* (and L.R.Mecham) *under* FTCA, 28 USC @1346(b) *for tort-negligence, fraud, civil conspiracy & intentional infliction of emotional distress; Gilmore under* 1st, 5th & 7th *Amend.; Texas (agents) under* 14th *Amend.; a 'writ of mandamus' under* 28 USC @1361 *to compel USAG investigate violation of my constitutional rights.*

In November 2002, City again filed a motion for *civil*-contempt against me (at No.98-944). Gilmore being a defendant in the *fourth*-suit, in January 2003, Hughes took over (No.98-944) to finish the *pro se*. On February 10, 2003, he entered a *criminal**s contempt order (indirect), which said among other things-

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*s Gompers, 221 US 418 ("court erred for criminal contempt because the proceeding was in equity"). Bagwell, 114 S.Ct. 2552 ("where civil and criminal relief is imposed, the criminal feature of the order.. fixes its character for the purpose of review..). Albrecht, 273 US 1 ("the arrest is in violation of 4th Amend., which declares that no warrants shall issue but upon probable cause, supported by oath or affirmation).

Hughes said-

"District courts may consider issues that are not on appeal, and they may rule on collateral matters in a case even when they cannot rule on the central issues. This includes sanction and contempt orders"- in support he cites:

Griggs, 459 US 56 (involves a timely motion under FRCP 59 to alter or amend judgment where the district court is given express authority to entertain a timely motion even after a notice of appeal had been filed..); Cooter, 496 US 384 (involves a timely motion under FRCP 11 for attorney fees after voluntary dismissal of the case).

"Mikkilineni will be committed to the custody of attorney general for 120 days... if he dismisses USDC/DC action with prejudice.. his incarceration will be probated..."

In February 2003, I motioned to *vacate* the *criminal* contempt order- because I have the right to *re*-file my existing claim (see Steel, 106 US at 454)-

'Remedy for false... testimony which prevented me from presenting to the court the merits...' in my *first*-suit. Court has no authority to enact rules that abridge or modify any substantive right" including my constitutional right of access into the courts- see 1st Amend; Hughes is 'without jurisdiction in the matter or over me...'; and City only gave a 'notice of *civil*-contempt.'

Hughes' *usurpation* of jurisdiction continued, and on February 27, 2003, entered an '*order for arrest*' for US marshal to take me into custody*8.

On March 24, 2003, I filed a motion to vacate order for arrest because the court *lacked* jurisdiction over me and there is no probable cause (see Albrecht, 273 US 1) for *criminal*-contempt under Rule 3 of FRCrP. Hughes

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*9 Stewart, 363 F.2d 599 ("absent exceptional circumstances, such as the alleged deprivation of a constitutional right, the scope of review on habeas corpus is limited to the examination of the jurisdiction of the court whose action is under attack. *Bowen*, 306 US 19, *Jurney*, 294 US 125, *Knewel*, 268 US 442, *Henry*, 235 US 219. *Harrison*, 307 F.2d 928... pending a decision on the question of jurisdiction, a district court has the power to issue a temporary restraining order in order to preserve existing conditions. *US*, 330 US 258, *Shipp*, 203 US 563, *Carter*, 135 F.2d 858...)

denied it, and continued with his abuse.

On 02/10/2003, I filed a motion in USDC/DC for temporary restraining order against US-US marshal and for preliminary injunction on the ground*9- deprivation of constitutional right without jurisdiction at USDC/SD Tx. On 02/14/2003, judge Urbina *denied* it.

On 02/14/2003, I filed an *emergency* first Notice of Appeal in DC Cir.- docketed on 02/20/2003 (at No.03-5051: fee paid).

On 03/03/2003, I filed an *emergency* motion to enjoin*9 defendants from prosecuting a separate action in the same matter at USDC/SD where jurisdiction is lacking; on 03/03/2003, Urbina *denied* it and ordered- *"this case is.. closed pending.. resolution of.. appeal"*10 .

So, on 03/05/2003, I filed, both in DC Cir. & USDC/DC, an *"emergency motion to Stay Order to Extradite* (me) *to Texas"*9. See Cr. FRAP R8(c). In response, on 03/06/2003, Urbina issued a show cause notice*9 *"why court should not sanction (me) for violations of rule 11"*. On 03/10/2003, I filed a petition for *"writ of habeas corpus"* in DC Cir. (see rule 8(c))*9- because US marshal came to *arrest* me (knocking my door), and DC Cir. has not acted on my *emergency* appeal pending

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*10 On 03/03/2003, Urbina vacated a default entered on 01/22/2003 against L.R.Mecham (at No.02-970); Urbina refused to act on my pending motions using transfer of jurisdiction (at No.02-970) into DC Cir. under FRAP 4(a)(4) with my first Notice of Appeal of 02/14/2003 (on a non-final order). Whereas, Gilmore (& Hughes) disregarded transfer of jurisdiction (at No.98-944) into 5th Cir. under FRAP 4(a)(4) with my Notice of Appeal on 03/01/1999 (on a final order), and entered *sanction* on 06/21/1999... to cause injury.

since 02/14/2003. I, also, filed the same in USDC/DC on 3/24/2003- hoping some one will act; but no one acted*11, and allowed US marshal to take me into *custody*. Nor did "they" act on my hand-written "*emergency Appeal*" (04/04/2003) sent from DC jail.

On April 03, 2003, US marshal took me into custody and produced me before a Magistrate at USDC/DC. Magistrate refused to hear my pending petition for "*writ of habeas corpus*", refused to take evidence on my challenge to Hughes' "arrest warrant"- on the ground*9- 'deprivation of constitutional right without jurisdiction at USDC/SD Tx.'- and entered a removal warrant. US marshal kept me in DC jail for 4-days doing *invasive* tests on me; then, picked me up on 04/07/2003am, and transported me into Houston jail on 04/08/2003pm- doing more *invasive* tests at a stop over on the way.

On April 09, 2003, Hughes held a hearing, *denied* to release me on bail, and said-

> "he is detained as a coercive measure to compel obedience with the court's orders"

At the next hearing on April 14, 2003, under Hughes' supervision, City-US made me sign on the documents- prepared by them- to dismiss my appeals at 5th Cir. & DC Cir. and my suit in USDC/DC (at No.02-970), which said:

"Mikkilineni... voluntarily decided to dismiss with

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*11 Like Sullivan-Gilmore scheme, Urbina-Hughes and judges at DC Cir.-5th Cir. schemed extortion. I could not discover telephone logs because judge Davis dismissed my complaint of *misconduct* against Gilmore, Hughes, DeMoss, Garza, Barksdale, Higginbotham, Jolly, Stewart (No.05-09-90142-9) as if- it is an affair within a *clan*-family.

> prejudice... agrees and admits that he has not been coerced to sign... nor is he signing under duress..."

Then, on 4/14/2003 at 4pm, freed me with no ID or no money.. On April 25, 2003, Hughes entered an 'amended order of contempt...' (App.4) which "superseded" *prior* sanction-contempt-arrest-extortion etc.., and said among other things-

> "Mikkilineni will pay the City... $25,000 for its costs... unless he obtains permission from Hughes, Mikkilineni may not file suit, in any court, against City, US etc... future violations may result in new criminal contempt.. including incarceration"

Hughes' amended order is not a final order*12, as it left open a decision on the merits into future- although it effectively *nullified* the 'order for arrest' etc.. after extortion of dismissals- suit and appeals- including an appeal in the 5th Cir. (at No.03-20238) which is dismissed on 4/18/2003 for lack of jurisdiction.

On 4/17/2003, Urbina *dismissed* my suit (No.02-970) *"with prejudice"* under the pretext- *his* clerk did not show *him* my motion which I filed on 04/16/2003 to *"void the paper(s) signed by prisoner Mikkilineni on 4/14/03 under duress*13... and permit Mikkilineni's DC court suit to proceed to a Jury trial.."*

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*12 Cunningham v. Hamilton County, 527 US 198 (A decision is not final,.. unless it ends the litigation on the merits.. Court does not think that appellate review of a sanction order can remain completely separate from the merits).

*13 Warfield, 267 F.3d at 542 (6th Cir.) (citing Randall, 820 F.2d 1317 (DC Cir.))

Then, on 4/18/2003, Urbina *denied* my request to "*void papers*" as if he is unable to correct his clerk's failure. Thus, the schemed '*extortion*' is completed*[14].

On 4/25/2003, Hughes *denied* my request to "*void the paper(s) signed by prisoner Mikkilineni on 4/14/03 under duress.*"

On 05/07/2003, I filed a second Notice of Appeal on Urbina's *final* order, which DC Cir. docketed at No.03-5135; then, on 05/22/2003, DC Cir. consolidated it with my pending appeal at No.03-5051.

Per Hughes' contempt order, on May 08, 2003, I filed my "*Request for Leave to Sue*" for causes against:

. *City under* 14th *Amend.*, @1983, 1985 & *tort-intentional infliction of emotional distress; US agent under* 5th *Amend.; and US under* FTCA 28 USC @1346(b) *for tort- negligence, fraud, intentional infliction of emotional distress.*

Upon my return on April 14, 2003 from Houston jail, I felt steadily weaker during April to July 2003. In August, I had blood tests done at Georgetown U. Hospital; and by end of August my condition worsened, one-day, I, suddenly collapsed, and got admitted into Georgetown U. Hospital in September 2003 to discover I am dying with *leukemia* (*ALL*). Chemotherapy continued for 3-years, and I am still under the care of doctor(s) with *ill* health.

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*[14] On 4/21/2003, I filed a notice that the "*Extortion is Complete*" having *conspired* (and) made materially *false* statements under 18 USC @10001, *Racketeering* under @1951, *deprivation* of *rights* under color of law @242, and completing the *schemed Extortion* under @872. DC Cir. filed the document, but USDC/DC refused to file per Urbina's order.

On 09/19/03 (09/22/03), I caused to file a brief report in USDC/DC (& DC Cir.) that-

"I, Mikkilineni, since my April 2003 incarceration in both the DC prison and Houston prison, have undergone a consistent deterioration of my health. On September 2, 2003, I collapsed and was admitted to hospital, where I have been and continue to be treated for acute *leukemia*"

Then, on 11/03/2003, more than a month after filing that 'report' on my *injury* or *ill* health, or nearly 9-months after filing my *emergency* first appeal, DC Cir. (Henderson, Garland & Roberts) dismissed my appeal as moot*[15] (at No.03-5051) in an unpublished order citing law*[16-17], which shows abuse of power by the DC Cir. judges. On 02/03/2004, DC Cir. *denied* my request for rehearing *en banc*.

The continuing *injury* caused by the unlawful arrest, extortion- liberty, life or property- and a contempt order hanging over my head (App.4) with my existing claim unresolved, presents a "live controversy" that a court

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*15 Appeal No.03-5051 be dismissed as moot. A court may not hear an action if, at any time after its initiation, the dispute involved loses its character as a 'present, live controversy.'... Because the arrest warrant issued by USDC/SD, and the removal warrant issued by the USDC/DC were executed, and appellant was taken into and released from custody, this appeal no longer presents a live controversy for which this court can provide prospective relief. Because appellant will be subject to arrest again only if he chooses to disobey the USDC/SD orders, his reliance on the 'capable of repetition, yet evading review' exception to the mootness doctrine is unavailing...and the motion to withdraw the motion for voluntary dismissal be dismissed as moot."

can provide relief*17.

Hughes did not act on my pending *first* 'Request for Leave to Sue'; and he *denied* (App.3) my *second* 'Request for Leave to Sue' of July 13, 2009, which he asked me (on phone) around that time to file. This denial being a *final* order, on July 27, 2009, I filed a Notice of Appeal; 5th Cir. docketed it at No.09-20494. I filed my brief, but City-US did not file any response.

On 6/01/2010, nearly a year later, 5th Cir. (Jolly, Wiener & Elrod) on its own motion, approved Hughes' abuse and wrongs in an unpublished order (App.1) and manufactured reasons that are in direct conflict with the law*18 of this Court. On 6/30/2010, 5th Cir. *denied* my request for rehearing *en banc* (App.6).

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*16 Beals, 396 US 45 (the cause of action became moot because of an amendment to the statute..); Arizona, 520 US 43 (the state employee who sued the state resigned during the pendency of the appeal and lost standing to make her claim moot..); Hickman, 144 F.3d 1141 (because the former inmates' claims were moot at the time of court's decision.., the case no longer presents an actual, ongoing case or controversy,..); Reimers, 863 F.2d 630 (the test for mootness of an appeal is whether the appellate court can give any effective relief in the event that it decided on the merits..). Honig, 484 US 305, Spencer, 91 F.3d 1118, Hickman, Reimers etc.. involve inmates having engaged in misconduct that would once again place at the risk of misconduct & in jail...

*17 Mclane, 3 F.3d 522 (court dismissed the appeal and remanded the case for further proceedings on liability. Spencer, 91 F.3d 1118 (to save a case from mootness federal courts require litigants' rights be affected).

*18 Steel, 106 US 454; Beggerly, 118 S.Ct. 1866-8; Holland, 130 S.Ct. 2549; Hazel-Atlas Glass, 322 US 248-250

Reasons why Certiorari should be Granted

I. Review is warranted because 5th Cir. has decided an important federal question- in approval of an unlawful or *void* sanction-contempt rule made by a lower court, to abridge or modify *pro se* citizen's 1st Amend. right of access into the courts on his existing claim, with a threat of "*new criminal contempt charges and criminal penalties, including incarceration*" in conflict with the decisions of 6th & 3rd Cir. under FRAP 4(a)(4)- that should be settled by this Court.

I came seeking justice for what City-US (DoI) did to me on a written contract in 1993-4; nearly 2-decades passed, and I have yet to see justice even after facing '*near death*' in 2003 and continued *injury* in the hands of City-US agents.

Because of my national origin the *un*righteous did not allow me present evidence on the merits to a Jury and violated my constitutional rights (5th & 7th Amend.) by dismissing my claims with *fraud* upon the court. Upon discovery of significant *new*-evidence in late 1997, I filed an independent action in early 1998 under FRCP 60(b)(6) & (d)*[18].

This Court said [*forgive me for using learned judges' words because it is unwise to argue.. like lawyers do*]-

In Steel, 106 US at 454:

"..if a judgment has been obtained by means (of false and perjured testimony), the remedy of the aggrieved party is to apply for a new trial, or take an appeal to a higher court; and if the testimony was accompanied with acts which prevented him from presenting to the court the merits of his case, or by which the jurisdiction of the court was imposed

upon, he may also institute some direct proceeding to reach the judgment"

In my case, I did exactly that and almost *died* in doing so. See facts.

In Beggerly, 118 S.Ct. at 1866-8:

"..that independent actions under rule 60(b) is limited to cases of grave miscarriage of justice.. (citing Hazel-Atlas, 322 US 238). Independent action must, if rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of *res judicata*. Such a case was Marshall, 141 US 589, in which the plaintiff alleged that judgment had been taken against her in the underlying action as a result of a forged document"

In Holland, 130 S.Ct. 2549:

"A petitioner is entitled to equitable tolling if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.. Such extraordinary circumstances are not limited.. Courts must often exercise equity powers... on a case-by-case basis, demonstrating flexibility and avoiding mechanical rules, in order to relieve hardships.. arising from a hard and fast adherence to more absolute legal rules (citing Hazel-Atlas, 322 US 238)"

In Hazel-Atlas Glass, 322 US at 248-250:

" Equitable relief against fraudulent judgments is not of statutory creation. It is judicially devised remedy.. to accord all the relief necessary to correct particular injustices.. the judgment therefore must

> be vacated, the case now stands in the same position as though Hartford's corruption had been exposed at the original trial".

Having this law in hand, Gilmore "*struck*" my amended complaint under the pretext- I did not *seek leave* of court for filing *once* as a matter of right under rule 15(a); then, dismissed my suit under the pretext- my alleged facts are "*insufficient*". She also denied my motion to clarify the facts. More than 4 months later, having the jurisdiction in the matter transferred into the 5th Cir. under FRAP 4(a)(4)(B)(i), Gilmore entered an unlawful sanction (App.7).

5th Cir. approved Gilmore's abuse and wrongs in direct conflict with the decisions of 6th & 3rd Cir. See FRAP 4(a)(4)(B). Under the law, after entry of a final-order on the merits, a party can only file motions such as-

(i) for judgment under FRCP 50(b);

(ii) to amend or make additional factual findings under FRCP 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under FRCP 54 if the district court extends the time to appeal under rule 58;

(iv) to alter or amend the judgment under FRCP 59;

(v) for a new trial under FRCP 59; or

(vi) for relief under FRCP 60 if the motion is filed no later than 28 days after the judgment is entered.

None of these allows a motion for sanction to prohibit another party's 1st Amend. right of access into a court; also- (i), (iii), (v) & (vi) not applicable to City here. A motion under FRCP 52(b) or 59(a), prior to December 1, 2009, had to be filed within 10 days after entry of

final judgment of February 16, 1999. See Keohane, 320 F.2d 429 (6th Cir.)-

> "..that orders entered by the district court prior to the appellant's filing of the second (notice) were null and void because the court was without jurisdiction to make them after the appeal had been taken (with the first notice)".

That's true in my case- on March 1, 1999, I filed my first Notice of appeal on the final order; and on May 24, 1999, I filed a second Notice on the denial of rule 60(b) motion. Gilmore' sanction order entered on June 21, 1999 must be *nuli* and *void*.

In Venen, 758 F.2d 117 (3rd Cir.)-

> "..the motions set forth in rule 4(a)(4) are explicitly required to be served not later than ten days after entry of judgment and the district court lacked power to act on untimely (motions)"

It's applicable to the events prior to December 1, 2009.

Whereas, in Alberti, 46 F.3d 1347- 5th Cir. said:

> "..the paradigmatic civil contempt sanction, involves.. an order to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance"

Alberti permits sanction against a debtor who disobeys final order. I am not a debtor, nor disobeyed the final order. Gilmore has no power under Alberti to abridge my rights.

Gilmore and 5th Cir. judge(s) have abused power by not allowing my claims go to merits. See Horne, 129 S.Ct. 2579-

> ".. once a party carries the burden (of showing the changed conditions), a court abuses its discretion when it refuses.."

Gilmore's entry of sanction to prohibit me from *re-*filing my existing claim with a *new* finding that I filed '*groundless federal* and *state law claims in bad faith*', and 5th Cir.'s approval of it, has shielded City-US agents from liability for *fraud* upon the court in a *pro se* case. There is no law under which a sanction, such as this, can be lawful even if the ruling in Gompers, 221 US 418, is knowingly misused:

> "the civil contempt sanction is designed to coerce a party (me) to do the thing required.. for the benefit of the complainant (City here)"

Therefore, the sanction is not a lawful order in my case, and it is *void* because Gilmore *lacked* jurisdiction at the time that sanction was entered, even as a temporary injunction for few days- per 5th Cir. in Carter, 135 F.2d 858:

> ".. (to) preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The district court concluded it had jurisdiction.. We have reversed that conclusion.."

Carter is inapposite to my case. Gilmore's sanction order abridged my constitutional right. I moved to dissolve that order, but it resulted in 5th Cir. clerk's wrongful act. So, the ruling in Shipp, 27 S.Ct. 165 (cited by 5th Cir. in Stewart, 363 F.2d at 599) is directly applicable in my case-

"..it is true that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt.."

5th Cir. (judges) knew the law because I reminded in my pleadings. So, the judges made the clerk dismiss my appeal (No.99-20669) on Gilmore's unlawful sanction, under the pretext- '*I failed to pay docketing fee*'. No additional fee is required for filing an amended Notice of appeal. See FRAP 4(a)(4)(B)(iii). My motion for waiver of filing fee was pending in 5th Cir. at that stage.

There is no law that can resurrect an unlawful or *void* order to life, or create new jurisdiction (at No.98-944) to benefit Gilmore after March 1, 1999- it is so even after transfer of my suit (at No.01-314) per Sullivan-Gilmore *talk*.

The judges continued to abuse power. Gilmore enters contempt, and the 5th Cir. judges (Jolly, Garza, Stewart) dismiss my appeal (at No.01-21086) claiming "*no issue of arguable merit*". See Bagwell 114 S.Ct. 2552 (*the contempt power uniquely is liable to abuse*).

Because my existing claim remained unresolved, I *re-*filed a *fourth* suit (at No.02-970) in USDC/DC. This time judges *talk* took into *black hole*- extortion- arrest me, put me in jail to cause *injury* as part of coercion, and make me dismiss the suit.

So, the US agents (at USDC/DC & DC Cir.) decided not to act on my *emergency* pleadings or writ of *habeas corpus*, and per the scheme allowed *arrest* and *extortion* to take place under Hughes' supervision. Then, Urbina played his role- dismiss my suit and blame *his* clerk; then, deny my rule 60(b) motion to *void* the papers I signed under duress. See Warfield, 267 F.3d at 542 (citing Randall, 820 F.2d 1317, DC Cir.) where 6th Cir.

agreed that rule 60(b)-

> "..gives the courts discretion to set aside a voluntary dismissal with prejudice if the dismissal was not a 'free, calculated, and deliberate' choice"

The DC Cir. judges (Henderson, Garland, Roberts), having known of the '*extortion*' and the '*injury*' caused to me, decided in an *unpublished* order to dismiss my *emergency* appeal (at No.03-5051) as *moot*-

> "A court may not hear an action if.. loses its character as a 'present, live controversy'. An action is moot if it becomes impossible.. to remedy the complained-of injuries...and the motion to withdraw the motion for voluntary dismissal be dismissed as moot"

The case law cited by DC Cir. in support of "*mootness*", actually shows abuse of power by these judges because in my case-

> 'I have standing', 'my case presents an actual, ongoing controversy', 'court could have given an effective relief on the merits' (because of 'City-US agents misconduct')

Here, City-US agents' *misconduct* affected my rights. Therefore, DC Cir.- if it were not a party to the *extortion* scheme- could have remanded my case back to Urbina or to an unbiased *fair* judge for further proceedings on liability. See Mclane, 3 F.3d 522 (*court dismissed the appeal and remanded the case for further proceedings on liability*); Spencer, 91 F.3d 1114 ("*.. to save a case from mootness federal courts require litigants' rights be affected*"). DC Cir. judges did not want to follow the law, but chose the "*moot*" route (thinking I am dying...).

Thus, my existing claims still remain unresolved with a contempt order of Hughes dated 4/25/2003 (App.4),

hanging over my head, which said-

> "unless he obtains permission from.. Hughes, Mikkilineni may not file suit, in any court, against the City, Texas, US... future violations may result in new criminal contempt... incarceration" (and a warning from DC Cir. on the abusive nature of a judge: I "*will be subject to arrest again only if*.. I *choose to disobey the* USDC/SD Tx *orders*").

I had no choice, but file a request for permission from Hughes to allow me file a suit on my existing claim against City-US. Hughes did not act on my *first* request filed in 2003 (thinking I am gone). Then, in July 2009, upon my inquiry, he asked me to file another request; so, I filed a rule 60(b) motion that has no time limit. He denied it (App.3) without an opinion. I timely filed an appeal (at No.09-20494). 5th Cir. (Jolly...) in an *unpublished* order (App.1) dismissed it as *frivolous*- as if "*frivolous*", "*moot*" & "*unpublished*" are the *code* words for a cover up of extortion-

> "We review the enforcement of a sanction order for abuse of discretion.. Mikkilineni has failed to make... critical showing (to pursue a nonfrivolous legal claim)"

5th Cir. judges did not want to see their own abuse of power; nor want to differentiate between '*usurpation of jurisdiction' v. 'abuse..*', because the former imposes liability. See Stump, 435 US 349.

Thus, in one stroke 5th Cir. managed to approve *void* sanction, contempt, *criminal* contempt, arrest, extortion under a pretext- I "*failed to make critical showing* (on actual prejudice from abuse and ability to pursue a nonfrivolous legal claim)". Thus, 5th Cir.'s decision is in conflict with 6th & 3rd Cir. decisions under FRAP

4(a)(4)(A)(ii), and decisions of this Court.

On the issue of *jurisdiction in a court-* over the person, the place, in equity- see Carter, 135 F.2d 858 (5th Cir.)-

> ".. it is now held that, except in the case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. See Treines, 308 US 66; Adkins, 310 US 381.."

In my *first* or *second* suit no one contested jurisdiction in equity or over the person to enter a final order on the merits. The contest came about on the orders- such as sanction, contempt, criminal contempt, arrest warrant & extortion- that Gilmore & Hughes entered after March 1, 1999, with plain usurpation of jurisdiction.

Sullivan's *sua sponte* order on 5/11/2001 to transfer my suit (No.01-314) and file transfer on 6/01/2001 occurred because of an admitted *talk* between Gilmore-Sullivan. My pleadings before Sullivan made it clear that Gilmore and 5th Cir. had already deprived my constitutional rights; therefore, Sullivan knew it is an 'impermissible venue' for my claims to prosecute in Texas. The transfer order while depriving my right to a review by DC Cir. said- "*it is in the interest of justice to transfer this case...*" to Gilmore- so, she can usurp jurisdiction and continue doing injury to the "*Indian-American*" shielding others.

Even if we assume Sullivan's transfer was a done deal (*only open for an investigation by FBI or Congress..*), there is no law that can resurrect life into an unlawful *void* sanction entered two years earlier in *June 1999*, or permit its continued use to enter contempt, criminal

contempt, arrest, extortion, and an amended contempt etc... If a *talk* between two or more persons who are under Oath to uphold the constitution- here, Gilmore's participation in 2001 may have been as a private person- can deprive *pro se* citizen's constitutional rights, there cannot be an end to such a *talk*- for extortion causing near-*death* injury or even *kill* (like *criminal*-gangs do). That may be the reason DC Cir.'s Henderson, Garland & Roberts (and the rest) unable to see a "present, live controversy" (at No.03-5051); and, 5th Cir.'s Jolly, Wiener & Elrod (and the rest...) decided (at No.09-20494)-

> "..the merits.. and the propriety of the 2003 contempt order, ..neither of which are covered by Mikkilineni's 2009 notice of appeal"- [5th Cir. also dismissed my appeals (i) in April 2002 at No.01-21086, finding "*no issue of arguable merit*", and (ii) on 4/18/2003 at No.03-20238, for *lack of jurisdiction*)].

The ruling in Graham, 804 F.2d 953, by 6th Cir. is on point:

> "It is beyond dispute that the right of access to the courts is a fundamental right protected by the Constitution. Supreme Court found several constitutional bases for this right. Chambers, 207 US 142 (right of access is a privilege and immunity secured under article IV of the Constitution & 14th Amend.); California Motor Transp. Co., 404 US 508 (right of access is the right of petition of 1st Amend.); Wolff, 418 US 539 (right of access is founded in the Due Process Clause).. Cir. courts have found the right of access to the court to be protected by 1st Amend. Harrison, 780 F.2d 1422; Wilson, 593 F.2d 1375; McCray, 456 F.2d 315; Harris, 440 F.2d 315.

> Accordingly, interference with or deprivation of the right of access to the courts is actionable under @1983. See Harrison; Ryland, 708 F.2d 967".

Therefore, 5th Cir. decision in my case poses an important federal question involving constitutional rights, and this Court should settle it.

II. Review is warranted because 5th Cir. has decided an important federal question- in approval of a lower court's usurpation of jurisdiction, to deprive *pro se* citizen's life, liberty or property without due process under 5th (7th , 14th) Amend. on his existing or lost claim, construing it as "*denial-of-access-to-the-courts claim*" in conflict with the decisions of this Court in allowing an independent action under FRCP 60(b)- that should be settled by this Court.

I commenced the original cause in equity, and I am not a debtor in the "final order" in which my *first* suit was dismissed; nor did I violate any federal or state laws- except assert my 1st Amend. right to file an appeal or *re-*file my existing claim. There is nothing, here, that required either a sanction or contempt against me for coercion or vindication under Gompers, 221 US 418, other than to shield City-US from liability for *fraud* upon the court.

Gilmore enters *void* sanction, contempt orders; 5th Cir. gives approval. Hughes enters a *criminal* contempt (indirect) based on City's motion for a *civil* contempt and using prior *void* sanction-contempt. He orders arrest, takes me into custody, and supervises *extortion* of my liberty, property and life causing near *death injury.* Judges at USDC/DC, DC Cir. & 5th Cir. give the required support to Hughes.

Hughes entered an *arrest* warrant against me in violation of 4th Amend. See Albrecht, 273 US 1:

> "When the affidavits on which a warrant issues have not been properly verified the arrest is in violation of 4th Amend., which declares that no warrants shall issue but upon probable cause, supported by oath or affirmation"

After the *extortion* on 04/14/2003, and dismissal of my *fourth* suit on 04/17/2003 (by Urbina), Hughes entered an 'amended order of contempt' (App.4) prohibiting my right of access into a court without his permission. He knew he is not going to give permission- so, he did not act on my *first* request to sue. In July 2009, he denied my rule 60(b) motion for relief from his unlawful injunction, and denied my *second* request to sue. That denial being a final order, I timely appealed.

In June 2010, 5th Cir. entered an *unpublished* one-page order (App.1) approving Hughes' injunction or rule that abridged my right of access into a court on my existing or lost claim construing it as "*enforcement of a sanction order*". 5th Cir. approval of Hughes' denial of my rule 60(b) motion for relief is directly in conflict with the decisions of this Court. See Horne, 129 S.Ct. 2579-

> "The rule permits relief from a judgment.. where applying it prospectively is no longer equitable.."

In Salazar, 130 S.Ct. 1803-

> "court must never ignore significant changes in the law or circumstances underlying an injunction lest the decree be turned into an instrument of wrong. A court must find prospective relief that fits the remedy to the wrong or injury..."

5th Cir., also, refused to review the "*criminal feature of*

the order" involved in Hughes' amended contempt order and approved the abuse contrary to Bagwell, 114 S.Ct. 2552:

> "where both civil and criminal relief is imposed the criminal feature of the order.. fixes its character for purposes of review. The contempt power uniquely is liable to abuse... Contumacy often strikes at the most vulnerable.."

Thus, 5th Cir. clearly approved lower court making rules to abridge citizen's 1st Amend. right to petition the court on an existing claim, with a threat of *criminal* contempt and *incarceration*- an important federal law that has not been, but should be, settled by this Court.

Furthermore, in its June 2010 order, 5th Cir. knowingly misconstrued my existing or lost claim as a "*denial-of-access-to-the-courts claim*" under Christopher, 536 US 403, and said-

> "To prevail.., the claimant must show that he was actually prejudiced by the alleged violation. In order to demonstrate actual prejudice, a prospective plaintiff must show his ability to pursue a non-frivolous legal claim. Mikkilineni has failed to make this critical showing."

I never made any '*denial-of-access-to-the-courts*' claim like in Christopher in any of my suits filed. I only *re-*filed my existing or lost claim based on discovery of significant *new* evidence.

The documentary evidence that exist in the court record shows I suffered "*actual prejudice*" due to (i) City-US agents' *fraud* upon the court, (ii) unlawful *arrest*, coercion with near-*death injury*, and *extortion*.

My claim is not frivolous- only prevented from presenting to the court on the merits in order to shield those who did the *fraud* upon the court.

5th Cir. claim that I made a '*denial-of-access-to-the-courts claim*" and "*failed to make critical showing* (of a *non*-frivolous legal claim)" is clearly an abuse of power to continue depriving my constitutional rights- a decision in conflict with relevant decisions of this Court. See Spencer, 523 US 1:

> "party must.. have suffered, or threatened with, an actual injury traceable to the defendant.. An incarcerated convict's (or a parolee's) challenge to the validity of his conviction always satisfies the case-or-controversy requirement.. Once the convict's sentence has expired,- some "collateral consequence"- must exist if the suit is to continue. A wrongful criminal conviction has continuing collateral consequences"

In my case- wrongful warrant, arrest, incarceration, coercion, extortion, injury to me and an amended contempt order hanging over my head etc.. are the continuing collateral consequences.

In Horne, 129 S.Ct. 2579:

> ".. courts must vigilantly enforce federal law and must not hesitate in awarding necessary relief. It takes an original judgment as a given and asks only whether a significant change in factual conditions or law renders continued enforcement of the judgment detrimental to the public interest. The rule permits relief from a judgment.. where applying it prospectively is no longer equitable.. once a party carries the burden (of showing the changed conditions), a court abuses its discretion when it

refuses.."

Clearly, it's true in my case since 1997-8 at which time I reported discovery of significant *new*-evidence from Willard, and filed an independent action (at No.98-944) under Steel, 106 US at 454.

Finally, in Christopher, 536 US 403, this Court agreed that-

> ".. any other remedies for the officials' alleged misconduct remained available *without asserting a claim for denial of access to the courts.. However unsettled the basis of the constitutional right of access to courts, the right is ancillary* to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court.. It follows that the underlying cause of action, whether anticipated or lost, is an element that must be described in the complaint, *just as much as allegations must describe the official acts frustrating the litigation..* "

In fact, Christopher court allowed plaintiff's tort claim to proceed to the merits because it is the underlying claim there, not the '*denial-of-access-to-the-courts claim*'. So, even under Christopher my existing claim, such as tort claim under 28 USC @1346(b), for injury caused by the *wrongful* acts, can proceed to the merits. I described my existing or lost claim- being shut out of court- in my complaint attached to my rule 60(b) motion for relief.

I did everything under the law, but 5th Cir. has made decisions violating my constitutional rights in direct conflict with relevant decisions of this Court, and approved a lower court order to abridge my right to petition court on my existing or lost claim construing it as "*denial-of-access-to-the-courts claim*".

Conclusion

This Court gave absolute *immunity* to the lower court judges- with a good intention. This Court *rule 10* says-

> "a petition for a writ is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law"

In reality Court gets *70* petitions to review each year- out of more than *10,000*- mostly filed by lawyers. Petition by a *pro se* in civil case may *never* see the light. Lower court judges are aware of that reality- so, the *twisting* of evidence-laws, or making new-law from the bench goes on as *no one* checks.. impacts immensely upon *good*-citizens.. and when spoken- "*all*" gang up.

So, I only ask this Court to '*see if there is any merit*' in my case or should I be *killed* because I stood up for rights. The decision in Salazar makes sense-

> "Congress, the Executive, and the Judiciary all have a duty to support and defend the Constitution.."

I wish that's true. I wrote DC Law Schools in search of a legal counsel- did not find, yet- may be because judge Roberts*[19] at DC Cir. (and judge Alito at 3rd Cir.) are involved in my case(s). I hope to find a lawyer should this Court agree to review.

Respectfully,

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*19 Wrongful-acts at USDC/WD Pa. (*Ziegler*) and at 3rd Cir. (*Sloviter, Alito* & others) is the root cause... See related Petition for Writ to 3rd Cir. The wrongful acts at USDC/SD Tx. (*Gilmore* & *Hughes*) and at 5th Cir. (*Garza, Jolly* & others) and *injury* came about because of the negligent acts at USDC/DC (*Sullivan* & *Urbina*) and at DC Cir. (*Roberts* & others). Therefore, it is only fair that *Mr.Alito* & *Mr.Roberts* *recuse* from my two Petitions because of prior negligent acts at 3rd & DC Cir. Whereas, others like *Mr.Scalia*- if had any talk with the judges at 5th (or 3rd Cir.) in my case- should *recuse* for possible bias.

Appendix

In the United States Court of Appeals for the Fifth Circuit

No. 09-20494 Summary Calendar Filed June 1, 2010

M.R.Mikkilineni,
Plaintiff – Appellant
v.
City of Houston; Dennis Lloyd; Russel Mai; Philip Bernard; Roger Boulet
Secretary of Labor; Juan Padron; Harold Dark; John Lwason
Defendants – Appellees

M.R.Mikkilineni,
Plaintiff – Appellant
v.
United States of America; State of Texas; City of Houston, Texas
Defendants – Appellees

Appeal from the United States District Court for the Southern District of Texas

USDC No.4:98-cv-944 USDC No.4:01-cv-1894

Before Jolly, Wiener, and Elrod, Circuit Judges.

PER CURIAM:

M.R.Mikkilineni appeals the district court's denial of his motion for permission to sue. Mikkilineni is required to file this type of motion because he has previously brought at least four frivolous suits against the defendants. *E.g., Mikkilineni v. City of Houston*, 37

F.App'x 88 (5th Cir. 2002) (unpublished). In 2003, after Mikkilineni filed suit against the defendants in the District Court for the District of Columbia, the district court held Mikkilineni in contempt of court, ordered him to pay a $25,000 compensatory sanction, and ordered him to obtain permission before filing suit again against the defendants. Six years later, Mikkilineni moved for permission to sue the defendants again, and the district court denied the motion.

Mikkilineni's brief is largely devoted to the merits of his unsuccessful litigation against the defendants and the propriety of the 2003 contempt order, neither of which are covered by Mikkilineni's 2009 notice of appeal. With respect to the denial of his motion for permission to sue, Mikkilineni argues that the district court erred because he has a right to bring an independent cause of action and because the denial of the motion resulted in a denial of his access to he courts. We review the enforcement of a sanction order for abuse of discretion. *See Balawajder v. Scott*, 160 F.3d 1066, 1067-68 (5th Cir. 1998).

To prevail on a denial-of-access-to-the-courts claim, the claimant must show that he was actually prejudiced by the alleged violation. *Lewis v. Casey*, 518 US 343, 351-52 (1996). In order to demonstrate actual prejudice, a prospective plaintiff must show his ability to pursue a nonfrivolous legal claim. *See Christopher v. Harbury*, 536 US 403, 415 (2002). Mikkilineni has failed to make this critical showing.

Mikkilineni's appeal is Dismissed as frivolous. 5th Cir. R.42.2. His motion for leave to appeal in forma pauperis is Denied.

Pursuant to 5th Cir. R.47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R.47.5.4

App. 3

United States District Court Southern District of Texas

M.R.Mikkilineni,
Plaintiff,

v. Civil Action H-98-944

City of Houston, *et. al.*,
Defendants.

Order

M.R.Mikkilineni's motion for leave to sue is denied.

Signed on July 14, 2009, at Houston, Texas.
Lynn N. Hughes, J

App. 4

United States District Court Southern District of Texas

M.R.Mikkilineni,
Plaintiff,
v.
City of Houston, *et al.*,
Defendants.

Entered Apr 25 2003
Civil Action H-98-944

Amended Order of Contempt and Preclusion Order

1. This order supersedes all previous sanctions and contempt orders in this case (dkt.nos.37, 54, 75).
2. Because Mikkilineni disobeyed the earlier preclusion order by filing Civil Action 1:01-314-EGS, *M.R.Mikkilineni v. United States of America, et al.*, in the United States District Court for the District of Columbia, he is in contempt of court.
3. As previously ordered, Mikkilineni will pay the city of Houston, as a compensatory sanction for his contempt, $25,000 for its costs, direct and indirect, related to his lawsuits. *See* order of Contempt, dkt. No. 75.
4. Unless he obtains permission from judge Lynn N. Hughes, Mikkilineni may not file suit, in any court, against: the city of Houston; the state of Texas; the United States of America; Philip Bernard; Roger Boulet; Vanessa Gilmore; John Lawson; Dennis Lloyd; Russel Mai; Juan Padron; or their agents, officers, or employees.
5. Mikkilineni may request leave to sue by filing in this case a motion titled "Request for Leave to Sue". In the motion, he will describe the claims he wishes to bring, the factual basis for the claims, and his efforts to resolve the dispute.

6. Future violations of the court's orders may result in new criminal contempt charges and criminal penalties, including incarceration.

Signed April 23, 2003, at Houston, Texas.
Lynn N. Hughes, J

In the United States Court of Appeals for the Fifth Circuit

No. 09-20494

M.R.Mikkilineni,

Plaintiff – Appellant

v.

City of Houston; Dennis Lloyd; Russel Mai; Philip Bernard; Roger Boulet
Secretary of Labor; Juan Padron; Harold Dark; John Lawson

Defendants – Appellees

M.R.Mikkilineni,

Plaintiff – Appellant

v.

United States of America; State of Texas; City of Houston, Texas

Defendants – Appellees

Appeal from the United States District Court for the Southern District of Texas, Houston

ON PETITION FOR REHEARING EN BANC
(Opinion 6/1/10, 5 Cir._____, F.3d_____)
Date Filed: 06/30/2010

Before Circuit Judges Jolly, Wiener, and Elrod
PER CURIAM:

(X) Treating the petition for Rehearing En Banc as a petition for panel Rehearing, the petition for panel Rehearing is Denied. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FRAP and 5th Cir. R.35), the petition for Rehearing En Banc is Denied.
Jolly, J

App. 7

In the United States District Court for the Southern District of Texas, Houston Division

M.R.Mikkilineni and Talasila, *Plaintiffs*,

v.

The City of Houston, Dennis Llyod, Russell Mai, Philip Barnard, and Roger Boulet, *Defendants*.

Entered Jun 21 1999

CA No. H-98-0944

Order Granting Sanctions against Plaintiffs

Pending in the court is defendants The City of Houston, Dennis Lloyd, Russell Mai, Philip Barnard and Roger Boulet's Reurging their motion for sanctions (#32) against Plaintiffs M.R.Mikkilineni and Talasila. The court, having reviewed the motions and supporting evidence, Plaintiffs' response, if any; the argument of counsel, if any; as well as all matters of record in this action, is of the opinion that the City defendants' motion is meritorious and should be Granted in its entirety. The court Finds that it has jurisdiction over the subject matter and the parties to this proceeding. The court Finds that plaintiffs M.R.Mikkilineni and Talasila filed groundless federal and state law claims which were made in bad faith and/or for the purpose of harassment. Accordingly, it is therefore,

Ordered that plaintiff M.R.Mikkilineni pay to The City of Houston, Dennis Llyod, Russel Mai, Philip Barnard and Roger Boulets' attorney's fees, costs of court, and expenses incurred by the City in defending itself and these City defendants in this suit, in the amount of $500.00 to be paid by M.R.Mikkilineni in the form of a cashier's check made payable to the "City of

Houston" and delivered to the City attorney at 900 Bagby, 4th Floor, Houston, Texas 77002, on or before 5.00 o'clock PM on the 30th day of June 1999. It is further,

Ordered that plaintiff M.R.Mikkilineni and plaintiff Talasila must obtain the permission of the Chief judge of this court prior to filing any other suit in any forum against The City of Houston, Dennis Lloyd, Russell Mai, Philip Barnard and/or Roger Boulet.

Signed on this the 18th day of June 1999, in Houston, Texas.

Vanessa Gilmore, J

In the United States District Court for the Southern District of Texas, Houston Division

M.R.Mikkilineni, et al. Entered May 04 1999

v. CA No. H-98-0944

The City of Houston, et al.

Order

On February 16, 1999, this court granted defendants' motion to Dismiss. (Instrument No.25). The court then signed a final judgment dismissing Plaintiff's action on February 16, 1999. On March 1, 1999, Plaintiff filed a motion for Relief from judgment under rule 59(a)(2) and rule 60(b)(1). (Instrument No.27). Plaintiff now seeks to set aside this court's Order granting defendants' motion to Dismiss and requests an opportunity to file an amendment to his complaint. Plaintiff argues that he should be allowed to file an amended complaint because he was a pro-se litigant. Having failed to articulate any legal basis or successful argument for vacating this court's Order or allowing him to file an amended complaint under such circumstances, the court Denies plaintiff's motion. (Instrument No.27).

The clerk shall enter this Order and provide a copy to all parties.

Signed this 4th day of May 1999.
Vanessa Gilmore, J

Constitutional and Statutory Provisions Involved

1. US Const. *Amendment* I:

"Congress (courts Congress...establish under *Art. III Sec.1*) make no law...abridging...the right...to petition the government for a redress of grievances."

2. US Const. *Amendment* IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation.."

3. US Const. *Amendment* V:

"No person shall be held to answer for a...infamous crime, unless on a presentment or indictment of a Grand Jury... nor deprived of life, liberty, or property, without due process of law..."

4. US Const. *Amendment VII*:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..."

5. US Const. *Amendment XIV*:

"...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws."

6. 28 USC @1346(b)(1)-United States as defendant:

".. the district courts.. shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, ..for injury or loss of property, or personal injury or death caused by the negligent or

wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."